

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

STIPULATION OF SETTLEMENT

- v.- :

S4 15 Cr. 627 (ER)

HERZEL MEIRI, :

Defendant. :

x

ALBERT DANNY MARCANO, :

Petitioner. :

x

NYCTL 1998-2 TRUST, BANK OF NEW :

MELLON, AS COLLATERAL AGENT AND
CUSTODIAN, :

Petitioner.

:

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EDGARDO RAMOS, District Judge:

WHEREAS, on or about November 1, 2016, HERZEL MEIRI, the "defendant"), among others, was charged in a five-count Superseding Indictment, S4 15 Cr. 627 (ER) (the "Indictment"), with the conspiracy to commit wire fraud and bank fraud, in violation of Title 18, United States Code, Section 1349 (Count One); money laundering conspiracy, in violation of Title 18, United States Code, Section 1956(h) (Count Two); money laundering, in violation of Title 18, United States Code, Sections 1957(a) and 2 (Count Three); money laundering, in violation of Title 18, United States Code, Sections 1956 (a)(1)(B)(i) and 2 (Count Four); and conspiracy to commit bank fraud, in violation of Title 18, United States Code, Section 1349 (Count Five) (D.E. 159);

WHEREAS, the Indictment included a forfeiture allegation as to Count One, among other forfeiture allegations, seeking forfeiture to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, of any and all property constituting or derived from any proceeds the defendant obtained directly or indirectly as a result of the offense charged in Count One of the Indictment;

WHEREAS, on or about May 9, 2016, the Government filed a Bill of Particulars identifying certain properties subject to

forfeiture as property that constituted or was derived from proceeds traceable to the commission of the offenses charged in the Indictment, among them the following property listed as item seven (7) therein:

- a. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 163 Madison Street, Brooklyn, New York 11216 (the "Subject Property") (D.E. 117);

WHEREAS, on or about April 10, 2018, the defendant pled guilty to Count One of the Indictment, pursuant to a plea agreement with the Government, wherein the defendant admitted the forfeiture allegation with respect to Count One of the Indictment and agreed to forfeit, pursuant to Title 18, United States Code, Section 981(a)(1)(C): (i) a sum of money equal to \$6,469,291.41 in United States currency, representing the amount of proceeds traceable to the commission of said offense ("the Money Judgment"); and (ii) all right, title and interest of the defendant in, among other things, the Subject Property;

WHEREAS, on or about April 16, 2018, the Court entered a Consent Preliminary Order of Forfeiture as to Subject Property/Money Judgment (the "Herzel Meiri Preliminary Order of Forfeiture"), which in relevant part, ordered the forfeiture to the United States of all the Defendant's right, title and interest in the Subject Property, which constitutes proceeds

traceable to the commission of the offense charged in Count One of the Indictment (D.E. 293);

WHEREAS, the provisions of Title 21, United States Code, Section 853 (n)(1), Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, and Rules G(4)(a)(iv)(C) and G(5)(a)(ii) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, require publication of a notice of forfeiture and of the intent of the United States to dispose of the Subject Property before the United States can have clear title to the Subject Property;

WHEREAS, the Notice of Forfeiture and the intent of the United States to dispose of the Subject Property was posted on an official government internet site (www.forfeiture.gov) beginning on May 3, 2018 for thirty (30) consecutive days, through June 1, 2018, pursuant to Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty and Maritime Claims and Asset Forfeiture Actions and proof of such publication was filed with the Clerk of the Court on May 30, 2019 (D.E. 574);

WHEREAS, pursuant to Title 21, United States Code, Section 853(n)(2) the deadline to file a petition with the Court asserting a legal interest in the Subject Property expired on March 4, 2019;

WHEREAS, on or about July 2, 2018, Albert Danny Marciano ("Marcano") filed a verified petition with this Court claiming an ownership interest in the Subject Property (the "Marcano Petition") (D.E. 365);

WHEREAS, on or about September 26, 2018, notice of the Preliminary Forfeiture Order was sent by certified mail, return receipt requested to, inter alia, The Bank of New York Mellon;

WHEREAS, on or about November 16, 2018, NYCTL 1998-2 Trust ("NYCTL 1998-2") and The Bank of New York Mellon, ("BONYM") as Collateral Agent and Custodian, filed a verified petition with this Court claiming an ownership interest in the Subject Property (the "NYCTL 1998-2 and BONYM Petition") (D.E. 486);

WHEREAS, no claims to the Subject Property, other than the Marcano Petition and the NYCTL 1998-2 and BONYM Petition, have been filed with this Court.

WHEREAS, the United States Attorney's Office for the Southern District of New York, Marcano, NYCTL 1998-2, and BONYM have agreed, in order to avoid litigation, to resolve the Petitioner's claim to the Subject Property on the terms and conditions set below;

IT IS HEREBY STIPULATED AND AGREED, by and between the United States of America, by its attorney Audrey Strauss, United

States Attorney, Assistant United States Attorney, Sebastian Swett of counsel, Marcano, and his counsel, Catherine P. Isobe, Esq., NYCTL 1998-2, BONYM, by their counsel, Kevin J. Mulvehill Esq. that:

1. Marcano hereby withdraws the Marcano Petition as to the Subject Property, without prejudice to his rights as a victim, or his right to file a petition for remission or mitigation of the forfeiture, pursuant to the procedures set forth in Title 28, Part 9, of the Code of Federal Regulations

2. NYCTL 1998-2 and BONYM, as Collateral Agent and Custodian hereby withdraw the NYCTL 1998-2 and BONYM Petition as to the Subject Property.

3. The Government has submitted a Petition for Remission for the Subject Property (the "Petition for Remission"), to the Money Laundering and Asset Recovery Section ("MLARS") of the United States Department of Justice, and MLARS has approved the Petition for Remission.

4. Upon the entry of a Final Order of Forfeiture as to the Subject Property, the Government will convey legal title of the Subject Property to Marcano, subject to the tax lien owned

by NYCTL 1998-2, which remains a valid tax lien against the Subject Property.

5. Marcano agrees to pay the tax liens owed to NYCTL 1998-2 as set forth in the NYCTL 1998-2 Petition, within thirty (30) days of the delivery of the deed to Marcano. Should Marcano fail to pay the tax liens owed to NYCTL 1998-2 within thirty (30) days then NYCTL 1998-2 shall be free to proceed with their state court foreclosure action against Subject Property filed under Kings County index number 505092/2016 ("Foreclosure Action"), and any stay of proceedings in the Foreclosure Action is hereby cancelled without further notice of delay except any stays or moratoriums enacted by federal, state, or local laws. Additionally, in the event of Mr. Marcano's death, NYCTL 1998-2 must comply with Section 1015 of New York's Civil Practice Law and Rules.

6. Marcano, NYCTL 1998-2, and BONYM are hereby barred from asserting any claim against the United States Attorney's Office for the Southern District of New York ("USAO-SDNY"), Department of Justice ("DOJ"), The Federal Bureau of Investigations ("FBI"), the United States Marshals Service ("USMS"), or agents and employees of the USAO-SDNY, the DOJ, the FBI and the USMS in connection with the seizure and/or possession of the Subject

Property, including but not limited to any claim that there was no probable cause to seize and hold the Subject Property, or for costs or attorney's fees.

7. The parties hereby waive all rights to challenge or contest the validity of this Stipulation Settlement.

8. This Stipulation Settlement shall in no way be deemed an admission of culpability, liability, or guilt on behalf of Marcano, NYCTL 1998-2, BONYM, or the United States, or any of their respective agents, contractors, officers, or employees, past and present.

9. Each party shall bear its own costs and attorney's fees.

10. This Stipulation Settlement constitutes the complete agreement of the parties and may not be amended without express written authorization from all parties.


11. The signature page of this Stipulation Settlement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Fax copies shall be treated as originals.

12. This Court shall have exclusive jurisdiction over the interpretation and enforcement of this Stipulation Settlement.

13. The Clerk of the Court shall forward three certified copies of this Stipulation Settlement to Assistant United States Attorney Alexander J. Wilson, Co-Chief, Money Laundering and Transnational Criminal Enterprises Unit, One St. Andrew's Plaza, New York 10007.

AGREED AND CONSENTED TO:

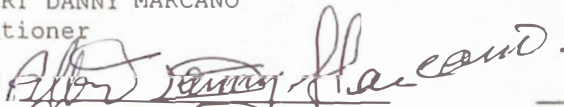
AUDREY STRAUSS
United States Attorney for the
Southern District of New York

By: 
SEBASTIAN SWETT
Assistant United States Attorney
One St. Andrew's Plaza
New York, NY 10007

11/8/2021

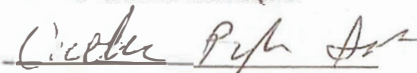
DATE

ALBERT DANNY MARCANO
Petitioner

By: 
ALBERT DANNY MARCANO


11-01-2021

DATE

BY: 
CATHERINE P. ISOBE ESQ.
Attorney for the Petitioner
Albert Danny Marciano
29 Albany Ave, 2nd FL
Brooklyn, NY 11216

10/15/2021
DATE

NYCTL 1998-2 TRUST, BANK OF NEW YORK MELLON, AS COLLATERAL AGENT
AND CUSTODIAN
Petitioner

By: 
KEVIN J. MULVEHILL ESQ.
Attorney for Petitioner
NYCTL 1998-2 Trust, Bank Of
New York Mellon, as Collateral
Agent And Custodian
28 East Main Street
Suite 1400
Rochester NY 14614

10/14/21

DATE

SO ORDERED:


HONORABLE EDGARDO RAMOS
UNITED STATES DISTRICT JUDGE

November 9, 2021

DATE